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## Suspension of the Period of Limitations to Claim a Credit or Refund of Personal Income Tax for Financially Disabled Individuals

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### Introduction

The Tax Law limits the period of time you have to file a claim for a credit or refund of an overpayment of income tax (generally referred to as the statute of limitations or period of limitations).

Generally, a claim for a credit or refund must be filed within three years from the date a return is filed or two years from the date the tax was paid, whichever is later. If a return has not yet been filed, the claim for a credit or refund must be filed within two years from the time the tax was paid.

### Suspension of period of limitations

Effective August 5, 2014, the Tax Law provides for the suspension of the period of limitations to claim a credit or refund of any state or local personal income tax or surcharge administered by the Commissioner of Taxation and Finance during any period of an individual's life in which the individual is unable to manage his or her financial affairs due to *financial disability*.

The law does **not** allow the period of limitations to be suspended where the period of time to file a claim for a credit or refund expired on or before August 5, 2014, or where a final decision on the merits of the claim was issued on or before August 5, 2014.

For most individuals, this means that the period of limitations cannot be suspended for:

- **tax years prior to 2010,**
- a 2010 income tax return that was due on April 15, 2011 (the period of limitation to file a claim for credit or refund expired on April 15, 2014), or
- a 2010 income tax return with a valid extension on file with the department that extended the due date of the return to October 15, 2011 (or later), if the return was filed on or before August 5, 2011 (the period of limitation to file a claim for refund or credit expired on or before August 5, 2014).

The following sections define financial disability, explain how to calculate the new period of limitation, and describe how to file your claim for a credit or refund due to financial disability.

### Financial disability

For purposes of this bulletin, *financial disability* means an individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that:

- has lasted or can be expected to last continuously for at least 12 months, or
- can be expected to result in death.

However, an individual is not considered financially disabled during any period in which anyone, including the individual's spouse, is authorized to act on behalf of the individual in financial matters.

Financial disability **does not** mean having insufficient funds to meet financial responsibilities.

### Calculate the new period of limitation

The normal period of limitations may be suspended for a number of days equal to the number of days in the period of the individual's financial disability. However, you cannot count any days where another person, including a spouse, is authorized to act on behalf of the individual in financial matters.

To determine the new period of limitation, the number of days of the financial disability is added on to the last date to file a claim for credit or refund under the applicable normal period of limitation.

**Example:** *In 2013, Mr. Smith was diagnosed with Alzheimer's disease. His physician determined that to the best of the physician's knowledge, Mr. Smith had become permanently impaired and unable to manage his financial affairs by March 1, 2015. On June 1, 2015, a relative authorized Mr. Smith's attorney to act on behalf of Mr. Smith in financial matters.*

*A review of Mr. Smith's timely filed 2011 personal income tax return shows that he would have been entitled to an additional refund if he had filed an amended return on or before April 15, 2015 (the normal period of limitation). However, Mr. Smith's attorney determines that the normal period of limitation to file a claim for credit or refund could be suspended due to financial disability for 91 days (March 2, 2015, through May 31, 2015).*

*To claim a refund due to financial disability, the attorney must file Mr. Smith's 2011 amended return on or before July 15, 2015 (the new period of limitation).*

### How to claim financial disability

To claim financial disability, you must complete the appropriate income tax return or amended income tax return according to its instructions and enter **K2** in one of the special condition code boxes. Proof of the financial disability must be submitted with the return.

Proof of financial disability must include **all** of the following:

- A written statement from a physician or other health care provider licensed, certified, or otherwise permitted by law to diagnose or treat the physical or mental condition that led to the claimed financial disability. The statement must include:
  - the name and a description of the individual's physical or mental impairment;
  - the physician's or health care provider's medical opinion that the impairment prevented the individual from managing his or her financial affairs;
  - the physician's or health care provider's medical opinion that the duration of the impairment has lasted or can be expected to last for a continuous period of at least 12 months, or will result in death;
  - to the best of the physician's or health care provider's knowledge, the specific time period during which the individual is or was physically or mentally impaired; and

- the following certification signed by the physician or health care provider: “*I hereby certify that, to the best of my knowledge and belief, the above representations are true, correct, and complete.*”
- A statement made by the person signing the claim for credit or refund that includes either of the following:
  - an affirmation that no person, including the individual's spouse, was authorized to act on the individual's behalf in financial matters during the period of physical or mental impairment; or
  - the exact dates that a person was authorized to act for the individual during this period.

If the Internal Revenue Service (IRS) accepted a claim of financial disability for an eligible period, New York State will follow the federal determination for that same period. Submit a copy of the IRS determination showing the approved period in addition to the proof of financial disability outlined above.

**Joint returns**

If only one spouse qualifies as financially disabled, the period of limitations is suspended only for the financially disabled spouse. When filing a joint return, a statement must be attached to show how each item of income, deductions, credits, payments, etc. should be allocated between each spouse. Income and deductions must be allocated in the same manner they would have been if separate returns had been filed.

**Certain claims for credit**

The following credit claim forms may be filed separately (without filing a personal income tax return):

- IT-214, *Claim for Real Property Tax Credit for Homeowners and Renters*,
- NYC-208, *Claim for New York City Enhanced Real Property Tax Credit for Homeowners and Renters*, and
- NYC-210, *Claim for New York City School Tax Credit*.

To claim a refund due to financial disability when separately filing any of the above forms, write **K2** at the top of the form.

All required proof of financial disability, as detailed above, must be submitted with the credit claim form.

**If a claim is denied**

If the claim for a credit or refund is denied, you have the right to challenge the Tax Department notice. If you choose to challenge, you must follow the instructions in the denial notice. For more information on filing a protest for the denial of a claim for credit or refund, see [Challenge Tax Department actions](#) on the Tax Department Web site.

**Note:** A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**References and other useful information**

**Tax Law:** Section 687(k); Administrative Code of the City of New York section 11-1787(k)